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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1096

MRS. MATTIE L. SMITH,

Appellant,

vs.

JEFFERSON COUNTY, GEORGIA, BY AND THROUGH ITS BOARD OF COMMISSIONERS OF ROADS AND REVENUES, J. E. BARROW, CLARENCE HENDERSON, AND SCHOOL DISTRICT NO. 2 OF JEFFERSON COUNTY, GEORGIA, BY AND THROUGH ITS BOARD OF TRUSTEES, F. T. McELREATH, W. D. EVANS, S. W. OVERSTREET AND J. W. FUTRAL, AND T. H. RIVERS AS TAX COLLECTOR OF JEFFERSON COUNTY, GEORGIA, AND JAMES HUBBARD AS SHERIFF OF JEFFERSON COUNTY, GEORGIA,

Appellees

MOTION TO DISMISS AND MOTION TO AFFIRM

JAMES M. HULL,
A. L. BRYANT,
W. WRIGHT ABBOT,
Counsel for Appellees.

Post Office Address:
First Nat'l Bk. Bldg.,
Louisville, Georgia.

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And now come the appellees and move the Court to dismiss the appeal filed herein, and move the Court to affirm the judgment of the Supreme Court of Georgia, and for cause show:

1. No real or substantial federal question is presented, but the same is made fictitiously only by bare averments in the pleadings.

2. The decision by the State Court was made under general principles and state statutes without the necessity of reference to any federal question. The opinion of the State Court contains no suggestions of any decision of any federal question.

3. The decision turns on construction of a state statute.

4. The record contains facts which abundantly support the State Court decision, and the Supreme Court of the United States will not review findings of fact by the State Court.

5. The decision by the State Court is manifestly correct, and the suggestion of the federal question is frivolous.

The following decisions of the Supreme Court of the United States are in point: In *King* v. *West Virginia*, 216 United States, page 92, 54 L. Ed., page 396, this court dismissed an appeal from a State Court decision upholding forfeiture by the state of land for failure to return for taxes for five years. In the second headnote it is pointed out that a question of fact is involved, and that there is therefore no basis for writ of error from the State Court decision. In the fourth headnote this court holds that misconstruction by the State Court of a state statute can not present a question for review by this court.

The case at bar is essentially a case turning upon title to lands by prescription. In *Donahue* v. *Vosper*, 243 United States, page 59, 61 L. Ed., page 592(3), this language is used: "Whether or not a person has acquired title by adverse possession to lands conveyed by the United States to a state in aid of railway construction is essentially a local question involving an appreciation of the evidence as to the conduct of the parties and is not open to review in the Federal Supreme Court on writ of error to a State Court."

In *Elder* v. *Wood*, 208 United States, 226, 52 L. Ed., page 464(2), this court holds: "The question of the validity under the due process of law clause of the United States Constitution Fourteenth Amendment of a tax sale made upon a notice published only in a Sunday newspaper, is not open on a writ of error from the Supreme Court of the United States to the highest court of a State, whose decision upholding the tax title was based upon the ground that a state statute made the tax deed, which, upon its face, was a valid instrument, *prima facie* evidence of the sufficiency of the notice, and that possession under such deed for the prescribed period met the requirements of the state statute of limitations."

The Court uses this language: "The decision, therefore, did not reach the only federal question which can be imagined with respect to this part of the case, namely, that a sale upon such a notice was wanting in due process of law, but rested upon entirely adequate grounds for a non federal nature."

Wherefore, appellees respectfully move that the appeal be dismissed and that the decision of the Supreme Court of Georgia be affirmed.

James M. Hull,
A. L. Bryant,
W. Wright Abbot,
Counsel for Appellees.

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Louisville, Georgia.